

1. What is the distinction between Herd Areas and Herd Management Areas and where is this legal distinction?

In the 1997 regulations under 4700.0-5 (d) **Definitions**, "*Herd area* means the geographic area identified as having been used by a herd and its habitat in 1971." Under 4710 3-1 **Herd Management areas**, the regulations say that "Herd management areas shall be established for the maintenance of wild horse and burro herds."

2. What is our Exact Regulatory Authority?

The BLM has the authority to evaluate and identify wild horse habitat in the land use planning process. The following discussion describes the regulatory authority and the underlying rationale for our actions.

The Wild Free-Roaming Horse and Burro Act of 1971 contains the following provisions:

The introduction specifies that wild horses "... are to be considered in the area where presently found as an integral part of the natural system of the public lands."

Sec. 2 (c) defines "Range" as "the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses..."

In Sec. 2 (f) (2) the Secretary of the Interior is directed to "maintain a thriving natural ecological balance and multiple-use relationship."

Sec. 3 (a) specifies consultation requirements associated with the management of wild horses.

Under Sec. 3 (b) (2) (ii), the Secretary is directed to consider, "information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976." This provision was pointedly added to the Wild Horse and Burro Act by the Public Rangelands Improvement Act of 1978.

Under Sec. 3 (b) (2) (iv), the Secretary is directed to determine that an "overpopulation exists ... until all excess animals have been removed so as to restore a thriving natural ecological balance ..."

Under Sec. 6, "the Secretary is authorized to enter into cooperative agreements with other landowners and ... may issue such regulations as he deems necessary for the furtherance ... of this Act."

Under 43 CFR 4700.0-6 (a) **Policy**, it is directed that "Wild Horses ... shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

Under 43 CFR 4710.1 **Land Use Planning**, it is directed that "management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant part 1600 of this title."

The Wild Free-Roaming Horse and Burro Act of 1971 identifies a clear linkage to the planning process because land use planning is the only reasonable means by which the Bureau of Land Management may:

Define "where presently found," and "ranges" as identified in the Act. Without an analysis of habitat conducted with public input in the planning process, "where presently found" means the exact locations of the horses themselves at the passage of the act.

Establish the "multiple use relationships" that define an "integral part," as specified in the act.

Conduct the consultation requirements specified in the Act.

Pursuant to the need to conduct this analysis, the BLM has prepared the following guidance:

The Wild Horse and Burro Program Guidance dated 12/22/80 III B.(4) under Planning for Management and Protection of Wild Horses and Burros, says "the Resource Management Plan ... will specify ... the specific herd areas where the population of wild horses and burros is to be reduced or eliminated..."

The 1986 BLM Manual 1622 - SUPPLEMENTAL PROGRAM GUIDANCE FOR RENEWABLE RESOURCES specifies under .4 Wild Horse and Burro Management 1. Management Areas that the BLM will "Delineate public land areas where herds of wild horses or burros will be maintained and managed in the long term (herd management areas)." Under .42 B. Manageability of the Herd Area, the manual specifies that "Each herd area should be evaluated for its herd management potential in terms of existing land ownership pattern, present and planned use of the subject and adjacent lands, proposed land tenure adjustments, and similar considerations. Herd areas with extensive inclusions of privately controlled lands and waters should be carefully reviewed for management in light of the legal requirement that wild horses and burros must be removed from private lands upon request by the owner.

The 1988 BLM Manual 4710 - MANAGEMENT CONSIDERATIONS, .31 Herd Areas specifies, "The geographic areas of public lands that were used as habitat for wild horses and burros in 1971 shall be delineated on maps and placed in a permanent file. If a decision is made in resource management planning not to manage wild horses and burros in a herd area because of resource problems or conflicts, eventual resolution for those problems or conflicts may allow for reconsideration of the decision."

It is notable that in IBLA case #90-419, Administrative Judge Mullen, in affirming a decision by the Montrose Colorado BLM Office, made reference to a land use plan decision where the BLM would "Remove all wild horses from the Naturita Ridge Area."

Given the citations above, the following paragraph describes the letter and spirit of The Wild Free-Roaming Horse and Burro Act of 1971:

Starting with an inventory of wild horse distribution, consider all the potential acreage where wild horse habitat existed at the passage of the act. Use the land use planning process to identify Herd Management Areas where a self sustaining herd of wild horses can be managed in a manner that will result in a thriving natural ecological balance. Manage conflicts involving private lands and water. Retain the identity of Herd Areas where horses are not currently managed so that those areas remain eligible for consideration in future planning initiatives.

White River Land Use Planning Rationale:

The previous paragraph is a perfect description of how the White River Resource Area established the 190,000 acre Piceance - East Douglas Herd Management Area. The recent Resource Management Plan addition of the 30,000 acre Greasewood Allotment, (added to the Piceance East Douglas Herd Management Area from the North Piceance Herd Area), serves as a prime example of how the system is designed to function. The Herd Management Area boundary has been carefully considered and periodically revised to promote wild horse management.

The Herd Area acreage excluded from the Herd Management Area includes those tracts where it has been determined that a self-sustaining population of healthy animals in balance with other uses and the productive capacity of their habitat, can not be managed in a manner that will produce a thriving natural ecological balance. It was determined that an overpopulation would exist as defined in the Wild Free-Roaming Horse and Burro Act of 1971, if we attempted to manage a self sustaining population in these areas as required by the regulations.

Limitations of the West Douglas Herd Area:

There are two interrelated problems associated with maintaining wild horses in the West Douglas Herd Area. The first relates to our physical ability to manage horses; the second relates to rangeland health.

History and Herd Distribution: The West Douglas herd historically has consisted of fewer than 200 animals (the 1996 noted 151 horses – this is the highest number ever recorded for this herd). In spite of the geographic proximity of the West Douglas Herd Area and the Piceance-East Douglas Herd Management Area, comparison of wild horse genetics in the two herds reveals no direct relationship between the West Douglas herd and the Piceance-East Douglas herd (Cothran, 2002). Instead, the West Douglas herd has the highest genetic similarity to wild horses in Colorado's Little Bookcliffs herd, followed by the Sand Wash and Spring Creek Colorado herds.

Wild horse herd distribution has been shifting to the area around Texas Mountain since the early 1980's. This shift in distribution has been documented through periodic horse inventories. The 1981 inventory documented 92 horses in the HA with 52 (69%) using the northern portion and 36 using the area around Texas mountain. The 1985 inventory showed 65% of the horses in the Texas Mountain area. In the 1996 survey 100% of the horses were using the Texas Mountain area. The current distribution of wild horses is attributable to a variety of factors including:

- Yearlong habitat distribution – The West Douglas Herd Area boundary contains a habitat imbalance long on winter range and short on summer range. The lack of perennial waters on the winter ranges augments wild horse preference for higher elevation habitat during the summer months. Since the summer range is concentrated in the southern portion of the herd area, horses through time have shifted their habitat preference south since entering the area in the mid 1970's.
- Human disturbance – The Douglas Creek Arch is a prolific zone for energy production. Energy production efforts in the north-central portion of the herd area have been substantial. Wild horse use and energy production have proven compatible in many areas of the west, including the Piceance – East Douglas Wild Horse Herd Management area in the White River Field Office. This is less the case in West Douglas. While wild horses can certainly be found in proximity to developmental activities, heavy industrial activity in the north appears a factor in the horse's preference for ranges to the south.

Horse use outside the Herd Area has primarily occurred on the Evacuation Creek allotment, southwest of the herd area. Horses outside the Herd Area have been documented in all inventories since 1980, when 4 were counted. In 2001, 53 horses were removed from outside the herd area. And a recent inventory in 2002 showed 15 remained outside the HA.

Key habitat for wild horses in the Texas Mountain area includes; Mailbox, Waggoneer and Sand Draw chainings; the bottoms of Texas Creek; the mountain shrub hillsides around Texas and Oil Springs Mountain and the connecting habitat. Within the Texas Mountain area a total of 2179 AUMS are available with approximately 60% within important habitat for horses. Map H-8 in Appendix H shows this key habitat.

Prior to 1983 horses moved freely between the herd area and the Piceance-East Douglas Herd Management Area. In 1983, the Colorado Department of Transportation constructed a fence along both sides of Highway 13. This double fence effectively separates the herd area from the herd management area.

Population Census: The first aerial survey was completed in 1974 resulting in only 9 horses noted. Since 1974 herd numbers have increased as high as 151 head (in 1996). The 2003 post-foal population is estimated at 93 horses. This figure includes adults and sub-adults.

The White River Field Office completed six gathers in West Douglas between 1981 and 2003, removing a total of 372 horses between these dates. Each of the gathers was completed using the standard methods of helicopter drive-trapping and helicopter herding/roping methods (see Appendix B). Table 3-1 below contains census data, estimated population size for years between census, gather years, and the number of horses removed at each gather.

Table 31: Wild Horse Population History of the West Douglas Herd Area

Year	Number Removed	Estimated Population	Year	Number Removed	Estimated Population
1974		9*	1989	23	63
1975		30	1990		50
1976		40	1991		61*
1977		53*	1992		66*
1978		68	1993		84
1979		85	1994		105*
1980		106	1995		126
1981	74	133*	1996	60	151
1982		68*	1997		95*
1983		82	1998	72	137
1984	45	98	1999		78
1985	45	59	2000		94
1986		32	2001	53	113
1987		44	2002		77*
1988		50	2003		92

* Number observed in Aerial Counts; All censuses were conducted by helicopter

**All census data is prior to the census year foal crop.

3. How were Herd Area boundaries established in 1974?

No current White River employee can specify exactly what happened in 1974. However several key facts are apparent. The West Douglas Herd Area boundary corresponds to the Twin Buttes Allotment. The North Piceance Herd Area boundary covers the area between the Piceance - East Douglas Herd Management Area and the White River, minus the Duck Creek and East Fork of Spring Creek grazing allotments. These two allotments were fenced tight and contained no horses in 1974. The Herd Area boundaries appear to have been based on existing fencelines and were apparently designed to include any potential habitat. Much of the acreage within the herd areas did not actually harbor wild horses at the passage of the act.

In the White River Resource Area, the definitive document on this issue is the attached 1974 inventory map. This was the first post Horse and Burro Act census, and it is clearly the best available data related to this issue. The table below and the attached map shows the number of horses on the 1974 census map according to the wild horse Herd Area and Herd Management Area boundaries presented in the current White River Resource Management Plan.

Location	Number Horses Observed - 1974
Piceance - East Douglas Herd management Area	138
West Douglas Herd Area	9

Location	Number Horses Observed - 1974
North Piceance Herd Area	2
Outside all identified Herd and Herd Management Areas (Pasture A - Square S)	2
Total	151

The data in the table above shows that the current Piceance - East Douglas Herd Management Area boundary contains 138 (91%) of the 151 horses found on the 1974 census map. The remaining 13 animals were all located within 4 miles of the current Herd Management Area boundary.

The formal interpretation of habitat associated with the 1974 wild horse distribution began almost immediately following the 1974 inventory. Public meetings were held in 1974. The analysis and public input led to a decision to manage horses in a habitat block that very closely matches both the current the Piceance - East Douglas Herd Management Area. The Piceance - East Douglas Herd Management Area includes over 100 square miles that did not actually contain a horse at the time of the 1974 census, but the land use plan analysis identified this block as the habitat needed for a high quality - viable herd.

4. What is the history for management of wild horse in the White River Resource Area?

The following is a brief synopsis of the key Planning decisions:

1975 WRRRA Management Framework Plan - 1) Remove wild horses west of Douglas Creek, 2) Retain Wild Horses East of Douglas Creek, 3) Construct a fence along the Douglas Creek road from Rangely up East Douglas Creek.

1980 WRRRA Management Framework Plan - 1) Allocate 2,101 AUMs of forage for a range of 95- 140 wild horses to be managed on an area of 148,153 acres (the Piceance -East Douglas HMA), 2) Remove all horses west of Douglas Creek, 3) Remove horses from all other allotments within the Piceance Planning Unit, 4) Complete boundary fencing of Yellow Creek and Cathedral Bluffs (allotments) to eliminate drift of wild horses into adjacent allotments.

1981 WRRRA Environmental Impact Statement on Grazing Management - Reiterated the 1980 Management Framework Plan decisions with the following rationale: "Decisions for wild horse management are aimed at maintaining a viable wild horse population within the best habitat of their present range, while simultaneously satisfying the needs for various other resource considerations."

1981 WRRRA Herd Management Area Plan - Reiterated the 1980 Management Framework Plan and 1981 Grazing Environmental Impact Statement decisions and again called for removal of all horses west of Douglas Creek and in allotments outside the Herd Management Area.

1985 WRRRA Piceance Basin RMP - Wild horse management would continue according to decisions approved in the WRRRA Herd Management Area Plan (Piceance -East Douglas Herd Management Area Plan). The plan designates the areas on which horses will be managed and states how the maintenance of a viable herd will be achieved.

1996 WRRRA Resource Management Plan - Manage for a healthy, viable breeding population of 95-140 wild horses on 190,130 acres (added Greasewood allotment from North Piceance HA to the Piceance - East Douglas HMA) so that a thriving ecological balance is maintained for all plant and animal species on that range. Continue monitoring studies and adjust the long term AML based on the results of that

monitoring. In the long term, remove all horses from West Douglas and the remainder of North Piceance Herd Areas.

2004 West Douglas Herd Area, Resource Management Plan Amendment and Environmental Assessment. Currently in Progress